

REMARKS

Reconsideration of the subject application in view of the present amendments and remarks is respectfully requested. All rejections and objections are respectfully traversed.

In the Claims

Applicant has canceled claims 22 and 32 and amended claims 1, 11, 21, 26, 27, 30, 31, 35-37, 40-42 and 44. Applicant submits that no new matter has been added by these amendments, support for which is found throughout the specification of the subject application, as originally filed, including at least at page 8, lines 7-31; and in Figures 2-5.

Applicant has amended and canceled claims herein solely to expedite prosecution of this application. In doing so, Applicant does not dedicate the subject matter of the canceled or amended claims, as originally filed or as previously pending, to the public, and does not acquiesce to the Examiner's current or previous reason(s) offered in support of the rejections of the canceled or amended claims or any claim(s) that depend(ed) therefrom. Applicant reserves the right to seek patent protection for claims similar or identical to the canceled or amended claims, as originally filed and/or as previously pending, in one or more subsequently filed and related applications.

Rejections Under 35 U.S.C. § 102

Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20-22, 25-27, 30-32, 35-37 and 40-45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Owensby, U.S. Patent 6,647,257. Applicant respectfully traverses the rejection.

Independent claim 1 of the subject application, as amended, is directed to a "system for audio streaming." The system comprises "an audio streaming server providing an audio stream" and a "client including a buffer storing at least portions of said audio stream received from said audio streaming server." A buffer status sensor is operative to "monitor a rate of playback of the contents of said buffer, and to monitor a rate of said audio stream." The buffer status sensor includes "an audio sampler for sampling portions of said audio stream" and the buffer status sensor is "identifying, as a function of said playback rate and of said audio stream rate, one or more locations in said audio stream where an audio segment could be inserted." Further, a client audio

output inserter is “operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments, which were not received from said audio streaming server, inserted at one or more of said audio stream locations identified by said buffer status sensor.”

Owensby is directed to a system and method for inserting commercial information or advertisements into a wireless mobile communication. (Abstract). Owensby discloses that the advertisements are inserted before and during communications. (Column 11, lines 20-25). Once a subscriber agrees to accept advertisements, Owensby discloses that ads are inserted at the beginning or end of a call or a call routine algorithm is provided to identify time intervals at which advertisements are to be inserted during the call. (Column 21, lines 26-39). Owensby further teaches that the call is monitored throughout its duration so that advertisements are inserted at the appropriate times for calls that have been identified as candidates for including advertisement interruptions. (Ibid). Owensby does not, however, disclose or suggest determining a rate of playback of a buffer nor monitoring a rate of an audio stream being provided to said buffer. Further, Owensby does not disclose or suggest determining where to place the advertisements in a call as a function of the determined audio stream and playback rates. As above, Owensby calls for inserting the advertisements, either at the beginning or end of a call or at one or more predetermined times during the call.

Applicant respectfully submits that independent claim 1, as amended, is patentable over Owensby for at least the reason that there is no disclosure, teaching or suggestion in Owensby of at least the claim 1 limitations of a buffer status sensor “identifying, as a function of said playback rate and of said audio stream rate, one or more locations in said audio stream where an audio segment could be inserted,” and a client audio output inserter “operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments, which were not received from said audio streaming server, inserted at one or more of said audio stream locations identified by said buffer status sensor.”

Specifically, a system in accordance with claim 1 compares an input audio stream rate to an audio stream output playback rate. If the audio stream output playback rate exceeds the input audio stream rate, a gap in the audio stream output will occur and instead of, for example, continuous

music being played, there will only be silence until the playback buffer is sufficiently filled from the input audio stream. Thus, by identifying the location of the gap before it occurs in the audio stream output, as recited in claim 1, a modified audio stream output is provided with a prerecorded audio segment that is inserted where there would otherwise be silence.

Owensby's approach, in contrast, does not permit insertion based on a comparison between a rate of an input stream compared to a rate of an output stream. Rather, Owensby places the advertisements either before or after a wireless call or at specific predetermined times within a wireless call. Owensby is devoid of any teaching or suggestion of identifying a gap as a function of input and output rates as is disclosed and claimed by Applicant. An advantage of the presently disclosed and claimed system is that gaps that occur at unpredictable points in the audio stream may be detected and pre-recorded audio segments, such as advertisements, can be inserted. Owensby, which provides no disclosure for gap detection, is limited to ad insertion at the beginning, end of the call and at predetermined times during the call. Thus, the claimed invention permits the utilization of unpredictably occurring gaps while Owensby does not. Accordingly, for at least these reasons, Applicant submits that claim 1 is not anticipated by (or obvious in view of) Owensby.

In addition, Applicant submits that claims 5, 6, 8, 10, 41 and 43 are also allowable for at least the reason that they depend directly from independent claim 1, which is believed to be allowable for at least the reasons set forth above.

Independent claim 11, as amended, is directed to a "method of audio streaming." Applicant submits that based on the language of claims 11 and 1, as well as on the Examiner's current rejection of these claims, the remarks set forth above with respect to Owensby in the context of the rejection of claim 1 are also applicable to the rejection of claim 11.

More specifically, claim 11, as amended, is allowable over Owensby for at least the reason that Owensby does not disclose, teach or suggest "monitoring a rate of playback of said contents of said buffer and monitoring a rate of said audio stream" and "identifying, as a function of said playback rate and of said audio stream rate, one or more locations in said audio stream where an audio segment could be inserted," and then "providing a modified audio stream, which includes inserting pre-recorded informational audio segments, which were not received in said audio stream,

at one or more of said audio stream locations identified by an output from said monitoring,” as recited in claim 11.

As discussed above in connection with claim 1, Owensby places advertisements before or after a wireless call or at specific predetermined times within the wireless call and provides no teaching or suggestion of identifying a gap as a function of input and output rates as recited in claim 11, as amended. Accordingly, claim 11 is not anticipated by (or obvious in view of) Owensby and allowance of claim 11 is respectfully requested.

In addition, Applicant submits that claims 15, 16, 18, 20, 42, and 44 are also allowable for at least the reason that they depend directly from independent claim 11, which is believed to be allowable for at least the reasons set forth above.

Independent claim 21 is directed to “a system for seeking in an audio stream” where the system comprises an “audio streaming server providing an audio stream” and an “audio sampler.” The audio sampler is provided for “sampling said audio stream and identifying portions of said audio stream in a sequential order as found in the audio stream.” Further, an audio sampling store is provided for “storing said portions identified by said audio sampler,” and an audio stream portion navigating seeker is “operative to sequentially play said identified portions in said sequential order and operative to insert at least one informational audible tone among said played portions.”

As set forth above, Owensby is a system for inserting advertisements into a wireless mobile communication. (Abstract). As Owensby states, an object is to provide a “system and method for subsidizing the cost of a wireless mobile communication service by inserting commercial information or advertisements.” (Column 10, lines 26-29).

Applicant respectfully submits that independent claim 21, as amended, is allowable over Owensby for at least the reason that Owensby does not disclose, teach, or suggest an audio sampler that is “sampling said audio stream” and “identifying portions of said audio stream in a sequential order as found in the audio stream.” Further, Owensby does not disclose, teach or suggest an audio stream portion navigating seeker operative to “sequentially play said identified portions in said sequential order and operative to insert at least one informational audible tone among said played portions.”

The Examiner has directed Applicant's attention to portions of Owensby asserting that Owensby is teaching a system and method for seeking. Applicant respectfully submits, however, that the portions of Owensby that the Examiner cites are directed to the insertion of a targeted advertisement either before or after a call or at a specific predetermined time within the call, as described above. Owensby is neither sampling an audio stream nor identifying portions thereof and then playing back those sampled portions with audible tones inserted among them. Applicant respectfully submits that Owensby does not disclose, teach or suggest the sampling and playing back of sampled portions. Moreover, sampling and playing back portions of a real-time wireless call in the context of the wireless call system of Owensby, would disrupt the wireless call. Accordingly, for at least the foregoing reasons, Applicant submits that claim 21 is not anticipated by the Owensby reference and allowance of claim 21 is respectfully requested.

In addition, Applicant submits that claims 25-27 and 30 are also allowable for at least the reason that they depend directly from independent claim 21 which is believed to be allowable for at least the reasons set forth above.

Independent claim 31, as amended, is directed to "a method of seeking in an audio stream." Applicant submits that based on the language of claims 31 and 21, as well as on the Examiner's current rejection of these claims, the remarks set forth above with respect to Owensby in the context of the rejection of claim 21 are also applicable to the rejection of claim 31.

More specifically, claim 31, as amended, is allowable over Owensby for at least the reason that Owensby does not disclose, teach or suggest, "providing an audio stream, sampling said audio stream, wherein said audio sampling identifies portions of said audio stream in a sequential order as found in said audio stream, storing said identified portions of said audio stream, seeking within said audio stream by playing said identified portions in said sequential order, and inserting at least one informational audible tone among said played portions," as recited in claim 31.

Owensby does not disclose, teach or suggest sampling and playing back of sampled portions. As discussed above, in connection with claim 21, to sample and playback portions of an audio stream in a substantially real-time communication would disrupt the wireless call in the Owensby system. Accordingly, Applicant submits that for at least this reason claim 31 is not anticipated by the Owensby reference.

In addition, Applicant submits that claims 35-37, 40 and 45 are also allowable for at least the reason that they depend directly from independent claim 31, which is believed to be allowable for at least the reasons set forth above.

In view of the foregoing, Applicant believes the pending claims are in condition for allowance and a notice to this effect is earnestly solicited. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application. The Examiner is hereby authorized to charge any fees due to this submission, or credit any balance, to Deposit Account No. 23-0804.

Respectfully submitted,

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